

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)
adoption of NEW RULE I)
pertaining to medical assistants)
and NEW RULE II pertaining to)
fee abatement)

TO: All Concerned Persons

1. On November 17, 2005, at 1:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on November 10, 2005, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I MEDICAL ASSISTANT (1) For the purpose of this rule, the following definitions apply:

(a) "Direct supervision" means the supervisor is within audible and visible reach of the person being supervised.

(b) "Office" means a location that a physician or podiatrist designates as the physician's or podiatrist's office, but excludes acute care or long term care facilities unless the physician or podiatrist utilizes the building which houses an acute care or long term care facility for scheduled services.

(c) "Onsite supervision" means the supervisor is in the facility and quickly available to the person being supervised.

(d) "Supervision" means accepting responsibility for, and overseeing the medical services of, a medical assistant by telephone, radio or in person as frequently as necessary considering the location, nature of practice and experience of the medical assistant.

(2) Medical assistants shall work under the supervision of a Montana-licensed physician or podiatrist who is responsible for assigning administrative and clinical tasks to the medical assistant relating to the physician or podiatrist's practice of medicine.

(3) Physician or podiatrist supervision shall be active and continuous but does not require the physical presence of the

supervising physician or podiatrist at the time and place that services are rendered so long as the physician or podiatrist is available for consultation, except that physician or podiatrist supervision shall be onsite when a medical assistant performs:

- (a) invasive procedures;
- (b) administers medicine; or
- (c) performs allergy testing.

(4) The supervising physician or podiatrist is responsible for determining the competency of a medical assistant to perform the administrative and clinical tasks assigned to the medical assistant. Assigned tasks must be consistent with the supervising physician or podiatrist's education, training, experience and active practice. Assigned tasks must be the type that a reasonable and prudent physician (or podiatrist) would find within the scope of sound medical judgment to assign. Assigned tasks, other than those tasks enumerated in 37-3-104(1)(b), MCA, should be routine, technical tasks for which the medical assistant has been appropriately trained. A physician (or podiatrist) may only delegate tasks that the physician (or podiatrist) is qualified to perform and tasks that the physician (or podiatrist) has not been legally restricted from performing. Any tasks performed by the medical assistant will be held to the same standard that is applied to the supervising physician or podiatrist.

(a) Assigned tasks cannot be subsequently assigned to another party by the medical assistant.

(5) The supervising physician or podiatrist's office shall inform patients when a medical assistant is seeing them and shall ensure that assigned tasks are provided in the context of an appropriate physician/patient relationship.

(6) A medical assistant must be a graduate of an accredited medical assisting program or possess experience, training or education sufficient, in the supervising physician or podiatrist's opinion, to perform assigned duties responsibly, safely and conscientiously. It is the responsibility of the physician (or podiatrist) to ensure that the medical assistant has the necessary education, training or experience to perform the assigned task.

(7) The following tasks may not be assigned to a medical assistant:

(a) any invasive procedures, including injections other than immunizations, in which human tissue is cut or altered by mechanical or energy forms, including electrical or laser energy or ionizing radiation, unless under the onsite supervision of a physician or podiatrist;

(b) care of an in-patient admitted to an acute care hospital facility licensed by DPHHS;

(c) conscious sedation monitoring, unless under the direct supervision of a physician or podiatrist; and

(d) administering fluids, blood products, or medications through an IV, unless under the direct supervision of a physician or podiatrist.

(8) Health care providers licensed in this state or any other jurisdiction whose licenses have been restricted,

suspended, revoked or voluntarily relinquished in lieu of discipline are prohibited from working in a physician or podiatrist's office as an unlicensed medical assistant.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-104, MCA

REASON: The Board finds that there is reasonable necessity to adopt NEW RULE I to comply with and implement the provisions of section 37-3-104, MCA, enacted in Chapter 85, Laws of 2003, which require the Board to adopt guidelines by administrative rule for administering the use of unlicensed medical assistants by physicians and podiatrists. The Board previously noticed NEW RULE I in October 2004, but withdrew it because of the volume of public comment in opposition to the original draft. The Board has redrafted NEW RULE I to address the concerns that were raised by the public. Specifically, the Board has expanded safeguards relating to physician or podiatrist supervision of medical assistants and created a more comprehensive list of tasks that may be delegated to medical assistants.

NEW RULE II FEE ABATEMENT (1) The board of Medical Examiners adopts and incorporates by reference the fee abatement rule of the department of labor and industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., November 25, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at www.medicalboard.mt.gov. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsmed@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

8. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
VAN KIRKE NELSON, M.D., Chairman

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

Certified to the Secretary of State September 26, 2005